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Chakdaha Panchayat Samity and Another Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Oct. 5, 2010

Acts Referred: Constitution of India, 1950 â€" Article 162, 166, 39, 53(I), 73

Hon'ble Judges: Patherya, J

Bench: Single Bench

Advocate: Sujoy Mondal, for the Appellant;Tarun Kr. Roy and Rina Banerjee, for State, Uttam Majumder and Debasish Kundu, for the Respondent

Final Decision: Dismissed

Judgement

Patherya, J.
By this writ petition the petitioner seeks a declaration that the Selection Committee constituted pursuant to order dated 21st

January, 2006 for selection of Anganwadi Workers is bad in law.

2. PETITIONER''S CASE

2.1 The case of the petitioner is that under the Integrated Child Development Services (ICDS) scheme, (scheme) Anganwadi Workers and

Helpers are appointed. The said Scheme was launched in 1975 by the Central Government and guidelines issued. On the basis of such guidelines

the Selection Committee is to be constituted. Such guideline was revised in November, 2006 by the Central Government which postulated that a

Medical Officer of the Primary Health Centre was to be included in the Selection Committee. The said revision was communicated to the

Secretaries of the ICDS Cells. Pursuant to the guidelines issued by the Central Government on 25th January, 2006 the Government of West

Bengal issued an administrative order wherein the Constitution of Selection Committee was set out. The said Government Order is contrary to the

directives issued by the Central Government with regard to the Constitution of the Selection Committee and required approval of the Central

Government.

2.2 Some of the States were not following the guidelines framed by the Central Government and on 28th May, 2007 a specific decision was taken

not to include Members of the Legislative Assembly (MLA) as Chairperson, as Anganwadi Workers are honorary and grass root functionaries

under the ICDS Scheme. The State ignored the said instructions, and continued to include MLAs in the selection process. This renders the

Constitution of the Selection Committee bad.

2.3 The ICDS Scheme was initiated under Article 39(f) of the Constitution. Article 162 of the Constitution empowers the Governor to issue

administrative orders. Entry-6 in List-II of the 7th schedule entitles the state to enact legislation. Entry-20 of List-III of the 7th schedule entitles the

Central Government and all the State Government to enact laws. Admittedly, under Entry-6 of List-II no law has been legislated by the State

Government. Therefore, the guidelines have been issued by the Central Government under Entry-20 of List-III and the States have been asked to

implement the same.

2.4 90% of the funds for administrative purposes is received from the Central Government while in case of nutrition it is shared equally by the

States and the Central Government. The said Scheme is run under the 5 year Plan of the Central Government. Therefore, it is a Scheme of the

Central Government which has been sought to be implemented by the States.

2.5 The Union of India has the power to make laws under Article 73 of the Constitution of India. For such proposition reliance is placed on

N.D.M.C. and Others Vs. Tanvi Trading and Credit Pvt. Ltd. and Others, ; J. Mitra and Co. Pvt. Ltd. Vs. Asst. Controller of Patents and Desig.

and Others, and Pancham Chand and Others Vs. State of Himachal Pradesh and Others, . For all the said reasons the constitution of the selection

committee is bad and the process initiated under Notification dated 9.11.2010 be stayed.

3. STATE RESPONDENT''S CASE

3.1 Counsel for the State respondent submits that the Scheme of 1975 is a Scheme of the Government of India, and the State Governments are

the implementing agencies. There is no Central or State enactment, in respect of the said Scheme. The guideline is a mere suggestion. Therefore,

implementation is at the discretion of the State.

3.2 On 8th April, 1985, an executive instruction was issued under Article 162 of the Constitution, which is not only binding but has legal force. The

exclusion of the MLA is not supported by any rational as the Chairman of the Municipality continues to be a member of the Selection Committee.

The directive principles of the State policy are not germane to the issue and the policy decision may defer State to State.

3.3 There has been no enactment by the State, although the subject is in the State List. In 1985 and 2006 by executive orders these guidelines

have been implemented. From a reading of the letter dated 28th May, 2007 it appears that a request has been made which has no binding effect.

The said letter is not an executive order nor issued in the name of the President.

3.4 The Monitoring and Tender Committee also includes a MLA against whose inclusion the petitioners have an objection. He is not a party in the

instant writ petition and the writ petition for non-joinder of party is liable to be dismissed. Reliance is placed on Ekta Shakti Foundation Vs. Govt.

of NCT of Delhi, and N.D.M.C. and Others Vs. Tanvi Trading and Credit Pvt. Ltd. and Others, is distinguishable as Parliament has no power to

enact laws in the State list. The petitioner has not sought for cancellation of the Government Order dated 25th January, 2006 whereby the

Constitution of the Selection Committee has been made. J. Mitra and Co. Pvt. Ltd. Vs. Asst. Controller of Patents and Desig. and Others, is

distinguishable and Pancham Chand and Others Vs. State of Himachal Pradesh and Others, is not applicable as by letter dated 28th May, 2007,

the Government has only made a request and no administrative instruction has been issued in the name of the President.

3.5 The petitioner is the Sabadhipati of the Panchayat Samiti and seeks to be appointed as a Chairman by virtue of the Memorandum dated 25th

January, 2006. Therefore, no order be passed on this application.

4. PETITIONER-IN-REPLY

4.1 Counsel for the petitioner in reply submits that the letter dated 28th May, 2007 has been issued under Article 53(I) of the Constitution and has

the force of an executive order, therefore, orders sought be passed.

5. CONCLUSION

5.1 Having considered the submissions of the parties the petitioner seeks to challenge the Constitution of the Selection Committee and thereby

seeks stay of the process initiated under the Notification dated 9th November, 2009.

5.2 On a comparative reading of the Government Order dated 25th January, 2006 and the communication dated 28th May, 2007, the said

communication can by no means of imagination be termed as an executive order and therefore has no legal force. On the other hand, the order

dated 25th January, 2006 has been issued under Article 162 of the Constitution of India and is binding. In fact, on 2nd November, 2006

instructions were issued by the Ministry of Women and Child Welfare, Government of India, regarding the Constitution of the Selection

Committee. On the basis of such instructions/suggestions executive orders were issued.

5.3 The said were not administrative orders issued by the Central Government as the Welfare for Women and Child is not included in the Union

list or in the Concurrent list but finds mention in the State list in the form of Public Health.

5.4 In the event, it was a subject either in the Union list or Concurrent list Parliament could have enacted a law and also issued orders under Article

73 of the Constitution of India. Instead suggestions and instructions have been issued with a request to implement.

5.5 In the letter dated 28th May, 2007 the decision though taken by the Central Government a request is made to the states to implement it

therefore it was not mandatory for the states to implement the request. The said letter cannot be construed as an order, executive or administrative

as it has not been issued in the name of the President.

5.6 There is no dispute with the proposition of law laid down in N.D.M.C. and Others Vs. Tanvi Trading and Credit Pvt. Ltd. and Others, but the

said decision is not applicable to the facts of the case as therein the enactments had been enacted by Parliament and the guidelines were issued to

achieve the object of the enactments. Such is not the case here.

5.7 J. Mitra and Co. Pvt. Ltd. Vs. Asst. Controller of Patents and Desig. and Others, can also have no application as in the instant case the letter

cannot be construed as an Order of the Union Government or of a delegate empowered to do so as the Central Government was not authorized to

legislate on the said subject. The Governor on the other hand has issued the order under Article 162 of the Constitution of India which has legal

force.

5.8 Pancham Chand and Others Vs. State of Himachal Pradesh and Others, speaks of compliance with the constitutional provisions viz. the Rules

of Business under Article 166 of the Constitution of India. In the instant case, no such Rules of Business has been produced. Therefore, the case is

distinguishable on facts.

5.9 The letter dated 28th May, 2007 does not state under whose order or authority the same has been issued, therefore, is not an executive order

as it is without authentication and does not say that it is made by the order of the President or that the President concurred in its making. The Rules

by which there has been any delegation of powers has also not been disclosed.

5.10 Although the inclusion of an MLA in the selection process may not be acceptable but to seek his removal without an executive order cannot

be supported, especially in view of the executive order issued on 25th January, 2006.

5.11 The minister is an adviser and the President will act with the aid and advice of his council of ministers. Therefore, until such advise is accepted

by the President, the matter will not become the action of the Union and for lack of authentication as per Article 77(2) of the Constitution or

issuance of letter dated 28th May, 2007 in the name of the President the memo dated 25th January, 2006 cannot be faulted.

5.12 For all the said reasons the Constitution of the Selection Committee cannot be faulted and no interference is called for in this writ petition.

Accordingly, this writ petition fails and is dismissed. Interim order passed shall stand vacated.